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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,687	02/19/2004	Kamal Jain	MS306434.1/MSFTP526US	4582
27195 7590 02/04/2009 AMIN, TUROCY & CALVIN, LLP 127 Public Square 57th Floor, Key Tower CLEVELAND, OH 44114			EXAMINER ERB, NATHAN	
			ART UNIT 3628	PAPER NUMBER
			NOTIFICATION DATE 02/04/2009	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docket1@thepatentattorneys.com
hholmes@thepatentattorneys.com
lpasterchek@thepatentattorneys.com

Notice of Abandonment

Application No.

10/782,687

Applicant(s)

JAIN ET AL.

Examiner

NATHAN ERB

Art Unit

3628

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 14 July 2008.

(a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.

(b) ☒ A proposed reply was received on 07 August 2008, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.

(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).

(c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).

(d) ☐ No reply has been received.

2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).

(a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).

(b) ☐ The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.

The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.

(c) ☐ The issue fee and publication fee, if applicable, has not been received.

3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).

(a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.

(b) ☐ No corrected drawings have been received.

4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.

5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.

6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.

7. ☐ The reason(s) below:

/John W Hayes/

Supervisory Patent Examiner, Art Unit 3628

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

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CLEVELAND, OH 44114



**Courtesy Reminder for
Application Serial No: 10/782,687**

Attorney Docket No:
MS306434.1/MSFTP526US
Customer Number: 27195

Date of Electronic Notification: 08/07/2008

This is a courtesy reminder that new correspondence is available for this application. The official date of notification of the outgoing correspondence will be indicated on the form PTOL-90 accompanying the correspondence.

An email notification regarding the correspondence was sent to the following email address(es) associated with your customer number:

docket1@thepatentattorneys.com
hholmes@thepatentattorneys.com
lpasterchek@thepatentattorneys.com

Please verify that these email addresses are correct.

To view your correspondence online or update your email addresses, please visit us anytime at <https://sportal.uspto.gov/secure/myportal/privatepair>. If you have any questions, please email the Electronic Business Center (EBC) at EBC@uspto.gov or call 1-866-217-9197.

PATENT

MS306434.01/MSFTP526US

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence (along with any paper referred to as being attached or enclosed) is being submitted *via* the USPTO EFS Filing System on the date shown below to Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

Date: February 4, 2009

/Karla D. Osolin/

Karla D. Osolin

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of:

Applicant(s): Kamal Jain, *et al.*

Examiner: Nathan Erb

Serial No: 10/782,687

Art Unit: 3628

Filing Date: February 19, 2004

Title: SYSTEMS AND METHODS FOR MODELING APPROXIMATE MARKET
EQUILIBRIA

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Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

**PETITION TO REVIVE FOR UNINTENTIONAL DELAY UNDER 37 C.F.R. §1.137(b) AND
REQUEST FOR WAIVER OF FEE UNDER 37 C.F.R. §1.17(M)/
SUBMISSION PURSUANT TO 37 CFR §1.114**

Dear Sir:

A Submission Pursuant to 37 CFR §1.114 is being filed concurrently herewith.

Due to a Patent Office error, the above-identified application became statutorily abandoned for failure to timely reply to a Final Office Action dated July 14, 2008. Applicants, through their undersigned representative, hereby request revival of the subject application and waiver of the petition fee for the following reasons.

Applicants' representative received a Final Office Action dated July 14, 2008. Applicants' representative submitted a complete, timely Reply to the Final Office Action on August 7, 2008, which was believed to place the application in condition for allowance. Thus, the complete Reply was submitted within two months of the date of the Final Office Action. Applicants' representative received no further correspondence from Examiner Erb until February 2, 2009, when an Advisory Action was mailed. In the Advisory Action, the rejections of claims 1-7, 11-16, 20 and 23-26 were maintained. In a telephonic communication with Examiner Erb's Supervisor, John Hayes upon receipt of the Advisory Action (on February 2, 2009), it was indicated by the Supervising Examiner that the delay with regard to the issuance of the Advisory Action was an error on the part of the Patent Office. The Reply to the Final Office Action filed on August 7, 2008 (which was filed through the USPTO's EFS Filing System), was inadvertently delayed and not transmitted to Examiner Erb until January 26, 2009, *after* the statutory deadline of January 14, 2009. Examiner Erb then issued the resultant Advisory Action on February 2, 2009. Therefore, it is believed that the statutory abandonment of the subject application is due to a Patent Office error for failure to timely transmit the Reply to Final Office Action (filed August 7, 2008) to Examiner Erb.

The U.S. Patent and Trademark Office states that MPEP §711.03(c) makes clear that an amendment after final rejection will not operate to avoid abandonment of the application in the absence of a timely and proper appeal, when the applicant simply permits the maximum extendable statutory period for reply to expire while awaiting a notice of allowance or other action. However, MPEP §711.03(c) does not make clear that an amendment after final rejection will not operate to avoid abandonment, MPEP §711.03 (c) merely states:

b) Prosecution of an application to save it from abandonment pursuant to paragraph (a) of this section must include such complete and proper reply as the condition of the application may require...

Accordingly, the amendment after final rejection filed on August 7, 2008 was a complete and proper reply to the final Office Action. Furthermore, MPEP §706.07(f) states that replies after final

should be processed and considered promptly by all Office personnel. As applicants' representative did not receive an advisory action until *after* the statutory deadline, the reply after final was not processed and considered promptly by the U.S. Patent and Trademark Office.

Even if an amendment after final rejection will not operate to avoid abandonment, some responsibility for the abandonment should be shared by the U.S. Patent and Trademark Office out of principles of fairness. Applicants' representative timely filed an amendment after final rejection and relied on the Examiner to make a timely response. Due to such reliance, the application went abandoned when the advisory action was received *after* the statutory deadline. Accordingly, applicants' representative is filing the required reply in the form of an RCE, the RCE fee, an amendment, and an adequate statement of unintentional delay. All applicants' representative is now requesting is simply waiver of the revival fee. The principles of fairness dictate that partial blame should rest with the Examiner (USPTO), and since applicants' representative has fulfilled the requirements of filing the RCE, the RCE fee, amendment, and statement of unintentional delay, the U.S. Patent and Trademark Office should at least waive the fee for reviving the application.

In view of at least the above, it is respectfully requested that the fee for the Petition to Revive be waived. Since the above-identified utility application was filed on or after June 8, 1995, no terminal disclaimer is required.

Applicants' representative respectfully submits that the entire delay in filing the required reply, from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR § 1.137(b), was unintentional.

In the event that waiver of the petition fee is not granted, a credit card payment form is filed concurrently herewith in connection with all fees due regarding this document. In the event any additional fees may be due and/or are not covered by the credit card, the Commissioner is authorized to charge such fees to Deposit Account No. 50-1063 [MSFTP526US].

Attached herewith is a submission pursuant to 37 CFR §1.114, filed concurrently with an RCE, for the above-identified patent application.

Respectfully submitted,

AMIN, TUROCY & CALVIN, LLP

/Himanshu S. Amin/

Himanshu S. Amin

Registration No. 40,894

AMIN, TUROCY & CALVIN, LLP
57TH Floor, Key Tower
127 Public Square
Cleveland, Ohio 44114
Telephone (216) 696-8730
Facsimile (216) 696-8731

§ 1.116 Amendments and affidavits or other evidence after final action and prior to appeal.

- (a) An amendment after final action must comply with § 1.114 or this section.
- (b) After a final rejection or other final action (§ 1.113) in an application or in an *ex parte* reexamination filed under § 1.510, or an action closing prosecution (§ 1.949) in an inter partes reexamination filed under § 1.913, but before or on the same date of filing an appeal (§ 41.31 or § 41.61 of this title):
 - (1) An amendment may be made canceling claims or complying with any requirement of form expressly set forth in a previous Office action;
 - (2) An amendment presenting rejected claims in better form for consideration on appeal may be admitted; or
 - (3) An amendment touching the merits of the application or patent under reexamination may be admitted upon a showing of good and sufficient reasons why the amendment is necessary and was not earlier presented.
- (c) The admission of, or refusal to admit, any amendment after a final rejection, a final action, an action closing prosecution, or any related proceedings will not operate to relieve the application or reexamination proceeding from its condition as subject to appeal or to save the application from abandonment under § 1.135, or the reexamination prosecution from termination under § 1.550(d) or § 1.957(b).

or limitation of further prosecution under § 1.957(c).

(d)

- (1) Notwithstanding the provisions of paragraph (b) of this section, no amendment other than canceling claims, where such cancellation does not affect the scope of any other pending claim in the proceeding, can be made in an inter partes reexamination proceeding after the right of appeal notice under § 1.953 except as provided in § 1.981 or as permitted by § 41.77(b)(1) of this title.
- (2) Notwithstanding the provisions of paragraph (b) of this section, an amendment made after a final rejection or other final action (§ 1.113) in an *ex parte* reexamination filed under § 1.510, or an action closing prosecution (§ 1.949) in an inter partes reexamination filed under § 1.913 may not cancel claims where such cancellation affects the scope of any other pending claim in the reexamination proceeding except as provided in § 1.981 or as permitted by § 41.77(b)(1) of this title.
- (e) An affidavit or other evidence submitted after a final rejection or other final action (§ 1.113) in an application or in an *ex parte* reexamination filed under § 1.510, or an action closing prosecution (§ 1.949) in an inter partes reexamination filed under § 1.913 but before or on the same date of filing an appeal (§ 41.31 or § 41.61 of this title), may be admitted upon a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented.
- (f) Notwithstanding the provisions of paragraph (e) of this section, no affidavit or other evidence can be made in an inter partes reexamination proceeding after the right of appeal notice under § 1.953 except as provided in § 1.981 or as permitted by § 41.77 (b)(1) of this title.
- (g) After decision on appeal, amendments, affidavits and other evidence can only be made as provided in §§ 1.198 and 1.981, or to carry into effect a recommendation under § 41.50(c) of this title.

[24 FR 10332, Dec. 22, 1959; 46 FR 29183, May 29, 1981; para. (a) revised, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997; revised, 65 FR 14865, Mar. 20, 2000, effective May 29, 2000 (adopted as final, 65 FR 50092, Aug. 16, 2000); paras: (b) and (d) revised, 65 FR 76756, Dec. 7, 2000, effective Feb. 5, 2001; revised, 69 FR 49959, Aug. 12, 2004, effective Sept. 13, 2004]